IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.214 OF 1990

The State of Maharashtra] Appellant.

versus

1. Sanjay Bhausaheb Patil]
   Age 20 yrs.]
2. Sou.Shanibai Bhausaheb Patil]
   Age 40 yrs.] Respondents.
   Both resident of Rukadi] (Org.Accused)
   Tal.Hatkanangle,]
   Dist.Kolhapur.]

Dr.F.R.Shaikh, APP, for the State/Appellant.

Mr.M.R.Suryavanshi for accused/Respondents.

CORAM : D.G.DESHPANDE

S.R.SATHE, JJ.

DATED : FEBRUARY 12, 2007.

ORAL JUDGMENT : [PER D.G.DESHPANDE,J]

1. This is an appeal filed by the State against the judgment and order passed by 3rd Addl.Sessions Judge, Kolhapur dated 20.10.1989 by which the Accused No. 1 has been convicted for the offence under Section 326 of the Indian Penal Code and then released him by giving benefit of Probation of Offenders Act by securing a bond for good conduct from him. By this appeal, the State has also challenged acquittal of Accused No.1 under Sections. 307 and 504. of the Indian Penal Code and acquittal of Accused No.2 under Sections 307, 326 and 504 of the Indian Penal Code.

2. On the other hand, there is no appeal filed by any of the accused.

3. We heard the learned APP for the State and learned advocate for the accused. The accused had assaulted an old woman when she went to the field of accused about which a serious dispute was going on between them. She tried to

destroy certain brinJal plants. The accused No.1 who was a young boy of less than 20 years at the time of incident got enraged and he assaulted her with blunt side of axe resulting in seven injuries.

4. The doctor, who was examined by the prosecution, proved those injuries. He has stated that he had examined the injured lady on 30.6.87 and she was discharged from the hospital on 9.7.87. Looking to the fact that there was no pre-plan or pre-meditation and that the assault was sudden because of certain provocation, the accused was not found guilty of the offence under Section 307, but the trial court held him guilty for the offence under Section 326 of the Indian Penal Code.

5. So far as conviction part is concerned, we are not required to interfered with. But in the circumstances of the case, we do not think that this is a case for converting the sentence of executing a bond of good behaviour into the sentence of rigorous imprisonment. Because admittedly, there was enmity between the parties over the properties i.e. the agricultural land

where the alleged assault took place. The Accused No.1 was a young boy of less than 20 years of age at the time of incident. There was no pre-meditation and planning. Because the lady uprooted certain plants, accused No.1 got enraged and assaulted her. This fact coupled with the evidence of doctor were sufficient for the court to come to the conclusion that accused No.1 had assaulted her.

6. However, the question is, whether the benefit of Probation of Offenders Act can be given to Accused No.1 if he is found guilty under Section 326 of the Indian Penal Code. We pointed out both the advocates the judgment of the Supreme Court in the case of **Jagdev Singh and another v/s. State of Punjab reported in AIR 1973 SC 2427** wherein the Supreme Court clearly held that since the offence under Section 326 of the Indian Penal Code is punishable for life imprisonment, benefit of Probation of Offenders Act cannot be given to the accused.

7. The learned advocate for the accused submitted that in the eventuality, this offence is to be considered as coming under Section 325

of the Indian Penal Code and not under Section 326 of the Indian Penal code, because according to him, though the axe was used, sharp side of it was not used for causing injuries and blunt side was used. The doctor has also stated that the axe is not sharp but blunt. Even though the doctor has stated that there was a fracture to skull, X-ray report of that was not produced at all and no explanation was given by the doctor and, there is a question mark in the certificate about the said injury which allegedly resulted in fracture.

8. So far as Accused No.2 is concerned, the trial Court acquitted her of all the charges. The State has challenged her acquittal. But no role is attributed to Accused No.2 in the entire incident and, therefore, acquittal of Accused No.2 is not liable to be interfered with.

9. In view of these circumstances, the accused has to be held guilty for causing grievous hurt under Section 325 of the Indian Penal Code. Hence We pass the following order :-

:ORDER:

Appeal of the State is dismissed.

However, the conviction of Accused No.1 is altered from Section 326 to Section 325 of the Indian Penal Code.

Rest part of the Judgment of the trial Court about execution of bond etc. to remain as it is.

Accused No.1 is on bail. His bail bond stands cancelled.

[D.G.DESHPANDE,J]

[S.R.SATHE, J]